

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: ) EPA DOCKET NO.: 92-15  
 )  
 ) ADMINISTRATIVE ORDER ON  
Stone Southwest, Inc., ) CONSENT PURSUANT TO SECTION  
 ) 106 OF THE COMPREHENSIVE  
a Delaware Corporation, ) ENVIRONMENTAL RESPONSE,  
Prescott Arizona (Yavapai- ) COMPENSATION, AND LIABILITY  
Prescott Indian Reservation) ACT OF 1980 as amended, 42  
 ) U.S.C. § 9606  
Respondent )  
 )  
 )  
 )

PREAMBLE

The United States Environmental Protection Agency (U.S. EPA) and Stone Southwest, Inc., herein referred to as the "Respondent", have each agreed to the making and issuance of this Order on Consent. This Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606(a) and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, further delegated to the EPA Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and further redelegated to the Director, Hazardous Waste Management Division by Region IX Delegations 1290.41 and 1290.42.

1 The State of Arizona has been notified of the issuance of  
2 this Order as required by Section 106(a) of CERCLA, 42 U.S.C.  
3 § 9606(a).

4 This Order requires the Respondent to undertake and complete  
5 removal activities to abate conditions which may present an  
6 imminent and substantial endangerment to the public health and  
7 welfare or the environment because of an actual or threatened  
8 release of hazardous substances at the Site, as defined in  
9 Section 1 below.

10 Respondent agrees to undertake all actions required by this  
11 Order.

#### 12 FINDINGS OF FACT

13 Based on available information, including the Administrative  
14 Record in this matter, U.S. EPA hereby finds that:

##### 15 1. Physical Location and Site Description

16 Southwest Forest Industries, Inc., ("Southwest Forest")  
17 operated a wood treating plant on 22 acres of land located  
18 approximately 1 mile northeast of Prescott, Arizona, east of U.S.  
19 89, leased from the Yavapai-Prescott Indian Tribe ("the Site")  
20 from 1961 until 1985. Operations involved the pressure  
21 application of wood preservation chemicals to logs and timbers.  
22 All of the stock of Southwest Forest Industries, Inc., was  
23 acquired by Stone Container Corporation in 1987. The name of the  
24 acquired company was changed to Stone Container Corporation in  
25 1987 and subsequently changed again to Stone Southwest, Inc.  
26 Thus, the successor to Southwest Forest Industries is now Stone  
27 Southwest, Inc., a Delaware corporation that is wholly owned by  
28 Stone Container Corporation, a Delaware corporation.

1 The Site is situated in Slaughterhouse Gulch and is bordered  
2 by Granite Creek to the west, a defunct auto salvage yard to the  
3 north, several residences to the east, and a hillside to the  
4 south. Granite Creek, located downgradient of the Site, is a  
5 perennial creek and is utilized for cattle grazing and quarrying  
6 activities. The creek discharges into Watson Lake which is used  
7 for recreational purposes including fishing and boating.

8 The City of Prescott is located to the south, east, and west  
9 of the Site. Prescott is a community of approximately 26,000  
10 people. Located within a half-mile of the Site are the Veterans  
11 Hospital, City of Prescott landfill, and Sheraton Hotel.

## 12 2. Enforcement Background

13 Prior to the enactment of the Resource Conservation and  
14 Recovery Act (RCRA), Southwest Forest utilized an unlined pond  
15 (referred to as the penta pond) as part of its wood treating  
16 process. However, in November of 1980, Southwest Forest notified  
17 EPA that it was operating as a Hazardous Waste Treatment,  
18 Storage, and Disposal facility ("TSD"). RCRA TSD Interim Status  
19 was granted to Southwest Forest for storage in drums and tanks,  
20 and treatment in tanks. The pond was taken out of service but  
21 was not cleaned out. In February 1985, Southwest Forest  
22 completed Interim Status Closure Procedures and was granted a  
23 RCRA "clean closure" by EPA Region IX. The RCRA closure,  
24 however, did not address the pond or other historic areas of  
25 contamination at the Site, and EPA Region IX did not require it  
26 to do so at that time.

27 In August 1991, the Yavapai Tribe hired a consultant to  
28 sample the pond contents and soils beneath the pond. The results

1 of the sampling indicated high levels of pentachlorophenol (PCP)  
2 in and under the pond. On-Scene Coordinator Donn Zuroski visited  
3 the Site on October 10, 1991, and found that the pond was not  
4 fenced and that no warning signs were posted. Furthermore, it  
5 was apparent that the north wall of the pond had become eroded  
6 (by flow in the adjacent wash) and that any rainfall runoff would  
7 flow through the pond and out into the wash and on into Granite  
8 Creek. On November 4 through 6, 1991, OSC Zuroski conducted a  
9 removal at the Site which included: construction of a run-off  
10 barrier; erection of a fence; and the posting of warning signs at  
11 the waste disposal pond. On February 4, 1992, OSC Zuroski and  
12 the Technical Assistance Team (TAT) conducted additional sampling  
13 at the Site. Results of this sampling confirmed the presence of  
14 contamination in the waste pond and in areas where treated wood  
15 had been processed.

### 16 3. Respondent

17 Stone Southwest, Inc., a Delaware corporation, is the  
18 respondent and is referred to herein as the "Respondent."

### 19 4. Site Characteristics and History of Operations

20 Southwest Forest operated a wood treating plant from  
21 1965 until 1985. Logs were mechanically debarked and air or kiln  
22 dried before the application of preservatives. The logs were  
23 loaded on a railroad car and rolled into a 8 x 90 foot process  
24 cylinder for heat and pressure application of the preservatives.  
25 The type of chemical, temperature, and pressure varied depending  
26 upon the treatment process used. Wood process solutions  
27 contained either 6% PCP in diesel oil, 3% PCP in methylene  
28 chloride, or a 1.5% copper chromated arsenic solution. The

1 treated logs were removed from the process cylinder and stored on  
2 a series of six bermed concrete pads to collect residual dripping  
3 treatment solution. The area south of the process cylinder was  
4 used for storage and inspection of the treated logs. Treatment  
5 of contaminated condensate from the preservation process  
6 consisted of oil/water separation with subsequent evaporation to  
7 remove free liquids. The remaining sludge containing diesel oil  
8 and PCP was placed in an unlined surface impoundment.

9 In 1971, seeps from the pond were discovered near Granite  
10 Creek, located approximately 850 feet downgradient from the pond.  
11 Based upon a consultant's recommendation Southwest Forest  
12 discontinued the use of the pond. The pond was partially  
13 backfilled with soil and untreated wood shavings. During the  
14 eight years between the pond closure and the construction of a  
15 waste water treatment system, the contaminated waste water was  
16 sprayed over the roads in and adjacent to the Site for dust  
17 suppression.

#### 18 5. Incident/Release Characteristics

19 In August 1991, the Yavapai-Prescott Tribe hired Erie  
20 and Associates ("Erie") to conduct soil sampling in and beneath  
21 the penta pond. Nine subsurface samples (to a depth of eight  
22 feet) were collected from three pits dug in the pond. Erie  
23 reported to EPA that it detected PCP concentrations up to 29%,  
24 total polynuclear aromatic hydrocarbons (PNAs) up to 1420 mg/Kg,  
25 arsenic up to 500 mg/Kg, and total chromium up to 220 mg/Kg.

26 During February 1992, EPA conducted additional soil sampling  
27 tests at the Site. These samples confirmed the existence of  
28 contamination in the waste pond and in the areas where the

1 treated wood had been processed. Samples taken in the pond  
2 indicated: total petroleum hydrocarbons (TPH) as high as 11,000  
3 parts per million (ppm); PCP levels as high as 2,500 ppm; arsenic  
4 levels as high as 215 ppm; and chromium levels as high as 205  
5 ppm. Samples taken from the process area show: PCP levels as  
6 high as 520 ppm; arsenic levels as high as 162 ppm; and chromium  
7 levels as high as 168 ppm.

8 6. Threats to Public Health or Welfare or/and the  
9 Environment

10 The substances of concern are pentachlorophenol (PCP)  
11 and copper chromated arsenic.

12 Pentachlorophenol is known to affect the cardiovascular  
13 system, respiratory system, eyes, liver, kidneys, skin and  
14 central nervous system.

15 Chromium is a suspected human carcinogen. Exposure to  
16 chromate dust may cause bronchogenic carcinoma. Chromium is a  
17 poison and when ingested causes deleterious gastrointestinal  
18 effects.

19 Arsenic is a carcinogen and is known to affect the liver,  
20 kidneys, skin, lungs, and the lymphatic system.

21 The potential for further release of contaminants to the  
22 soil, groundwater, and surface waters, as well as inhalation of  
23 airborne dust, currently threaten the public health, welfare, and  
24 the environment. There is a potential for hazardous substances  
25 to migrate off-site, and to flow into Granite Creek and into  
26 Watson Lake. Watson Lake is a major recreational area used by  
27 members of the Prescott community.

28 CONCLUSIONS OF LAW

1           Based upon the foregoing Findings, U.S. EPA hereby  
2 concludes that:

3           7. Southwest Forest Industries, Inc., the successor to  
4 which is Stone Southwest, Inc., operated a wood treating plant at  
5 the Site, located on the Yavapai-Prescott Indian Reservation, and  
6 the Site is a "facility" as defined by Section 101(9) of CERCLA,  
7 42 U.S.C. § 9601(9), and is hereinafter sometimes referred to as  
8 the "Facility."

9           8. Stone Southwest, Inc. is a "person" as defined by  
10 Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

11           9. Stone Southwest, Inc., as the successor to Southwest  
12 Forest Industries, Inc., was the "owner" and an "operator" of the  
13 facility, as defined by Section 101(20) of CERCLA, 42 U.S.C.  
14 § 9601(20). The Respondent is a responsible party under Sections  
15 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

16           10. Substances found at the Site include pentachlorophenol,  
17 copper chromated chromium and arsenic and are "hazardous  
18 substances" as defined by Section 101(14) of CERCLA, 42 U.S.C.  
19 § 9601(14), or constitute "pollutants or contaminants" that may  
20 present an imminent and substantial danger to public health or  
21 welfare under Section 104(a)(1) of CERCLA, 42 U.S.C.  
22 § 9604(a)(1).

23           11. The presence of hazardous substances in the soil at the  
24 Site and the future migration of these substances constitutes an  
25 actual or threatened "release" as defined in Section 101(22) of  
26 CERCLA, 42 U.S.C. § 9601(22).

#### 27                           DETERMINATIONS

28           Based on the foregoing Findings of Fact and Conclusions of

1 Law, the Director, Hazardous Waste Management Division, EPA  
2 Region IX, has determined that:

3 12. The actual or threatened release of hazardous  
4 substances at or from the Facility may present an imminent and  
5 substantial endangerment to the public health, welfare, or the  
6 environment.

7 13. The conditions present at the Site constitute a threat  
8 to public health or welfare or the environment based upon  
9 consideration of the factors set forth in the National  
10 Contingency Plan (NCP) at 40 CFR § 300.415(b).

11 14. The actions required by this Order are consistent with  
12 the National Contingency Plan (NCP), 40 CFR Part 300, as amended,  
13 and CERCLA, are in the public interest, will expedite effective  
14 remedial action and minimize litigation, and are reasonable and  
15 necessary to protect the public health, welfare and the  
16 environment.

17 WORK TO BE PERFORMED

18 Based upon the foregoing Findings, Conclusions, and  
19 Determinations, and pursuant to Section 106(a) of CERCLA, 42  
20 U.S.C. § 9606(a), it is hereby ordered and agreed that Respondent  
21 will undertake the following actions under the direction of EPA's  
22 On-Scene Coordinator:

23 15. Within **ten (10)** calendar days after the effective date  
24 of this Order, Respondent shall provide 24-hour site security to  
25 prevent public access to the Site. Site security shall include  
26 (i) fencing the entire site, or (ii) posting warning signs and  
27 providing a security guard 24-hours per day and assuming  
28 responsibility for the existing fence around the penta pond.



1 These site security measures shall continue until U.S. EPA  
2 determines that the level of security may be reduced. Respondent  
3 shall submit a report documenting the status of site security  
4 within thirty (30) days of the effective date of this Order.

5 16. Within **thirty (30)** calendar days after the effective  
6 date of this Order, Respondent shall submit to U.S. EPA for  
7 approval, a Characterization Plan for the removal activities  
8 ordered as set forth in Paragraph 17(a)(i) below. The Work Plan  
9 shall provide a detailed description of the activities to be  
10 conducted to comply with the requirements of this Order, and  
11 shall include a proposed schedule for implementing and completing  
12 the activities. The Work Plan shall contain a Site health and  
13 safety plan, a sampling and analysis plan, and a schedule  
14 providing interim timeframes, including initiation and completion  
15 dates, for the work to be performed, and a final completion date  
16 for the response actions to threats posed by the Site. The Work  
17 Plan and other submitted documents shall demonstrate that the  
18 Respondent can properly conduct the actions required by this  
19 Order.

20 a. The sampling and analysis plan shall provide a  
21 process for obtaining data of sufficient quality and quantity to  
22 satisfy data needs, and shall be consistent with EPA OSWER  
23 Directive 9360.4-01 ("Quality Assurance/Quality Control Guidance  
24 for Removal Activities: Sampling QA/QC Plan and Data Validation  
25 Procedures"), dated April, 1990. The sampling and analysis plan  
26 shall consist of (a) a field sampling plan which will define in  
27 detail the number, type, and location of, and the rationale for,  
28 samples and the type of analyses to be conducted; and (b) a

1 quality assurance project plan, which will describe the policy,  
2 organization, functional activities, quality assurance and  
3 quality control protocols, sampling procedures, sample custody,  
4 analytical procedures, and data reduction, validation, and  
5 reporting and the data quality objectives and measures necessary  
6 to achieve adequate data for use in planning and documenting the  
7 removal action.

8           b. The Site health and safety plan shall be prepared  
9 in accordance with EPA's Standard Operating Safety Guide, dated  
10 November 1981 and updated July 1988, and with the Occupational  
11 Safety and Health Administration (OSHA) regulations applicable to  
12 Hazardous Waste Operations and Emergency Response, 29 CFR Part  
13 1910.

14           17. The Work Plan shall include provisions for the  
15 following activities to be completed within the timeframes set  
16 forth:

17           a. Failure of the Respondent to properly implement  
18 each element of the approved Work Plan within the time periods  
19 set forth shall be deemed to be a violation of this Order. The  
20 Work Plan shall consist of the following:

- 21
- 22           i. Characterization Plan - Define and characterize the  
23 contamination on the Site, including contamination  
24 originating on the Site that has come to be located off  
25 the Site, through sampling, analysis, and monitoring;  
26 and prepare a rough outline of the Remedial Plan; and  
27           ii. Remedial Plan - Prepare a Remedial Plan which will  
28 include response actions to eliminate the contamination,

1 or to reduce the contamination to a level acceptable  
2 to EPA that will satisfy the cleanup standards set  
3 forth in CERCLA Section 121(d) and will not present an  
4 unreasonable threat to the public health, welfare, and  
5 environment, as determined by EPA; as well as the  
6 monitoring and analyses that will be needed to confirm  
7 the effectiveness of these actions. Respondent and EPA  
8 agree that the cleanup standard for pentachlorophenol  
9 shall be as follows: for soils, 11 mg/kg; for  
10 groundwater, 1 microgram/liter; or a higher level if  
11 Respondent can demonstrate to the satisfaction of EPA  
12 that such level meets the criteria of this paragraph  
13 and the NCP.

14  
15 b. Within five (5) calendar days after EPA  
16 approval of the Characterization Plan, the Respondent shall  
17 commence implementation of the Characterization Plan. Within  
18 sixty-three (63) days after commencement of the Characterization  
19 Plan, Respondent shall complete the implementation of the  
20 Characterization Plan. Within seventy-three (73) days after  
21 commencement of implementation of the Characterization Plan,  
22 Respondent shall prepare and submit to EPA the Remedial Plan,  
23 which shall include a report on the results of the implementation  
24 of the Characterization Plan. Within five (5) days after EPA  
25 approval of the Remedial Plan, Respondent shall commence  
26 implementation of the Remedial Plan, including any field or  
27 laboratory studies of remedial technologies or techniques that  
28 may be necessary to select or adjust the appropriate remedial

1 measures, as described in the Remedial Plan. Respondent shall  
2 conduct all activities included in the Remedial Plan with due  
3 diligence, and shall complete such activities within the schedule  
4 contained in the Remedial Plan and approved by EPA.

5 18. Each component of the Work Plan shall be reviewed  
6 by U.S. EPA, which may approve, disapprove, require revisions, or  
7 modify the Work Plan. If EPA disapproves the Work Plan in whole  
8 or in part, Respondent shall amend and submit to EPA a revised  
9 Work Plan within **fourteen days** of receiving EPA's notification of  
10 disapproval.

11 19. Once approved, the Work Plan shall be deemed to be  
12 incorporated into and made a fully enforceable part of this  
13 Order. Respondent shall implement and complete all work in  
14 accordance with the schedules, standards, specifications, and  
15 other requirements of this Order, and the Work Plan as approved  
16 or modified by U.S. EPA, and as may be amended or modified by  
17 U.S. EPA from time to time. Failure of Respondent to properly  
18 perform any aspect of the Work Plan or of any task-specific work  
19 plans in accordance with the approved time schedules and this  
20 Order shall be deemed a violation of the terms of this Order.

21 20. Respondent shall retain an environmental consultant  
22 qualified to undertake and complete the requirements of this  
23 Order, and shall notify U.S. EPA of the name of such consultant  
24 on or before the effective date of this Order. Respondent shall  
25 further provide a list of qualified contractors that may be used  
26 to perform the field activities specified in this Order. Upon  
27 being notified of the identity of the Respondent's selected  
28 consultant and contractors, U.S. EPA may disapprove of any, or

1 all, of the consultants, contractors and/or subcontractors  
2 retained by the Respondent. In the event U.S. EPA disapproves of  
3 a selected contractor, Respondent shall retain a different  
4 contractor to perform the work, and such selection shall be made  
5 within ten (10) business days following U.S. EPA's disapproval.  
6 In the event U.S. EPA disapproves of the selected consultant,  
7 Respondent shall retain a different environmental consultant  
8 within twenty (20) business days following U.S. EPA's  
9 disapproval. If U.S. EPA subsequently disapproves of the  
10 replacement consultant or contractor, U.S. EPA reserves the right  
11 to terminate this Order, conduct all or part of the removal  
12 action, and obtain reimbursement for costs and penalties from  
13 Respondent. During the course of the work, Respondent shall  
14 notify EPA in writing seven (7) days in advance of any changes or  
15 additions in the environmental consultant or the contractor used  
16 to carry out such work, providing its qualifications, name,  
17 address, and telephone number. U.S. EPA shall have the same  
18 right to approve changes and additions to the environmental  
19 consultant and the contractor as it has hereunder regarding the  
20 initial notification.

21 21. Respondent shall inform EPA orally or in writing at  
22 least forty-eight (48) hours prior to any on-site actions or  
23 activities pursuant to this Administrative Order on Consent, and  
24 shall not perform any physical on-site activity until receiving  
25 U.S. EPA approval for such activity. While awaiting U.S. EPA  
26 approval, Respondent shall proceed with all other tasks and  
27 activities which may be conducted independently of this work in  
28 accordance with the approved schedules.

22. U.S. EPA may determine that work in addition to tasks defined in the initially-approved work plan may be necessary to accomplish the objectives of the removal action. U.S. EPA may require that Respondent perform such additional work, if it determines that such work is necessary to complete the removal action. Respondents<sup>2/16</sup> shall either confirm <sup>its</sup> ~~their~~ <sup>ME</sup> willingness to perform the additional work in writing to U.S. EPA within seven (7) calendar days of receipt of the EPA request or invoke dispute resolution. Subject to U.S. EPA resolution of any dispute, Respondents<sup>2/16</sup> shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the work plan or in a written work plan supplement, and in accordance with any additional requirements of this Order. U.S. EPA reserves the right to conduct the work itself at any point, to obtain reimbursement from Respondent, and/or to seek any other appropriate relief. If Respondent determines, as a result of information obtained during the implementation of the Work Plan, that additional or different work is needed in order to define and characterize the contamination on the Site or to develop and implement effective remedial measures at the Site, Respondent shall submit proposed modifications of the Work Plan in writing to EPA for approval or disapproval. If the proposed modifications are disapproved, Respondent shall proceed with the work set forth in the work plan, without the proposed modifications. If EPA does not approve or disapprove the proposed modifications within twenty-one (21) calendar days from

1 the date of receipt by EPA, then any additional time beyond  
2 twenty-one (21) calendar days until EPA provides its decision  
3 shall be added to the remaining deadlines in the Work Plan.

4 23. All materials removed from the Site shall be disposed  
5 of or treated at a facility approved by the On-Scene Coordinator  
6 and in accordance with the Resource Conservation and Recovery Act  
7 of 1976 (RCRA), 42 U.S.C. § 6921, et seq., as amended, the  
8 regulations promulgated under that Act, Section 121(d)(3) of  
9 CERCLA, 42 U.S.C. § 9621(d)(3), and the U.S. EPA Revised Off-Site  
10 Policy, EPA OSWER Directive 9834.11, dated November 13, 1987. In  
11 carrying out the terms of this order, Respondent shall comply  
12 with all applicable Federal, State, and local requirements,  
13 including, but not limited to, the NCP, 40 CFR Part 300.

14 24. On or before the effective date of this Order, the  
15 Respondent shall designate a Project Coordinator. To the  
16 greatest extent possible, the Project Coordinator shall be  
17 present on Site or readily available during Site work. The U.S.  
18 EPA has designated Donn Zuroski as its On-Scene Coordinator. The  
19 On-Scene Coordinator and the Project Coordinator shall be  
20 responsible for overseeing the implementation of this Order. To  
21 the maximum extent possible, communication between the Respondent  
22 and the U.S. EPA, and all documents, reports, and approvals, and  
23 all other correspondence concerning the activities relevant to  
24 this Order, shall be directed through the On-Scene Coordinator  
25 and the Project Coordinator. During the implementation of the  
26 Work Plan, the OSC and the Project Coordinator shall, whenever  
27 possible, operate by consensus, and shall attempt in good faith  
28 to resolve disputes informally through discussion of the issues.

1        25. The U.S. EPA and the Respondent shall each have the  
2 right to change their respective designated On-Scene Coordinator  
3 or Project Coordinator. U.S. EPA shall notify the Respondent,  
4 and Respondent shall notify U.S. EPA, as early as possible before  
5 such a change is made, but in no case less than 24 hours before  
6 such a change. Notification may initially be verbal, but shall  
7 be given in writing within 48 hours after oral notification.

8        26. The U.S. EPA On-Scene Coordinator shall have the  
9 authority vested in an On-Scene Coordinator by the NCP, 40 CFR  
10 Part 300, as amended, including the authority to halt, conduct,  
11 or direct any work required by this Order, or to direct any other  
12 response action undertaken by U.S. EPA or the Respondent at the  
13 facility.

14        27. No extensions to the above time frames shall be granted  
15 without sufficient cause. All extensions must be requested in  
16 writing, and shall not be deemed accepted unless approved in  
17 writing by U.S. EPA..

18        28. All instructions by the U.S. EPA On-Scene Coordinator  
19 or his designated alternate shall be binding upon the Respondent  
20 as long as those instructions are not clearly inconsistent with  
21 the National Contingency Plan or this Order.

22        29. To the extent that the Facility or other areas where  
23 work under this Order is to be performed is owned by, or in  
24 possession of, someone other than the Respondent, Respondent  
25 shall use its best efforts to obtain all necessary access  
26 agreements. In the event that after using its best efforts  
27 Respondent is unable to obtain such agreements, Respondent shall  
28 immediately notify U.S. EPA and U.S. EPA may then assist



1 Respondent in gaining access, to the extent necessary to  
2 effectuate the response activities described herein, using such  
3 means as it deems appropriate. If U.S. EPA determines, in its  
4 sole discretion, that Respondent has been unable to obtain access  
5 despite using its best efforts, then Respondent's deadlines for  
6 completion of work required by this Order for which access is  
7 necessary shall be extended for the period necessary to obtain  
8 access, which period shall be determined by U.S. EPA. For  
9 purposes of this paragraph, "best efforts" shall not be construed  
10 to require Respondent to reimburse the Yavapai-Prescott Tribe for  
11 any response costs or damages they have incurred, other than  
12 response costs addressed in Paragraph 69 of this Order.

13 Respondent shall reimburse U.S. EPA for all attorneys' fees and  
14 court costs it incurs in assisting Respondent to obtain access.

15 30. Respondent shall provide access to the Facility to U.S.  
16 EPA employees, and U.S. EPA-authorized contractors, agents, and  
17 consultants, at reasonable times and shall permit such persons to  
18 be present and move freely in the area in order to conduct  
19 inspections, including taking photographs and videotapes of the  
20 Facility, to do cleanup/stabilization work, to take samples to  
21 monitor the work under this Order, and to conduct other  
22 activities which the U.S. EPA determines to be necessary. At the  
23 request of U.S. EPA, Respondent shall provide or allow U.S. EPA  
24 or its authorized representative to take split samples of all  
25 samples collected by Respondent pursuant to this Consent Order.

26 31. Respondent shall provide written weekly summary reports  
27 to the On-Scene Coordinator regarding the actions and activities  
28 undertaken under this Order. At a minimum, these reports shall

1 describe the actions that have been taken to comply with this  
2 Order, including all results of sampling and tests received or  
3 prepared by the Respondent and shall describe all significant  
4 work items planned for the next week.

5 32. The Respondent agrees to retain for six years following  
6 completion of the activities required by this Order copies of all  
7 records and files relating to hazardous substances found on the  
8 Site, or related to the activities undertaken pursuant to this  
9 Order, whether or not those documents were created pursuant to  
10 this Order. Respondent shall acquire and retain copies of all  
11 documents relating to the Site that are in the possession of  
12 their contractors, agents and employees. Respondent shall notify  
13 U.S. EPA at least sixty (60) days before any documents retained  
14 under this paragraph are to be destroyed. The documents retained  
15 under this paragraph shall be made available to the U.S. EPA upon  
16 request.

17 33. Respondent may assert a business confidentiality claim  
18 covering all or part of any information submitted to U.S. EPA  
19 pursuant to this Order. Any assertion of confidentiality shall  
20 be adequately substantiated by Respondent when the assertion is  
21 made. Information determined to be confidential by U.S. EPA  
22 shall be disclosed only to the extent permitted by 40 CFR Part 2.  
23 If no substantiated confidentiality claim accompanies the  
24 information when it is submitted to U.S. EPA, the information may  
25 be made available to the public by U.S. EPA without further  
26 notice to Respondent. Respondent agrees not to assert any  
27 business confidentiality claim with regard to any physical or  
28 analytical data.

1        34. Following the effective date of this Order, the United  
2 States may periodically, but not more frequently than quarterly,  
3 submit to Respondent payment demands containing accounting of  
4 response costs, including oversight costs, incurred by the U.S.  
5 Government with respect to the Site. Response costs shall  
6 include, but are not limited to, direct and indirect costs  
7 incurred by the U.S. Government in overseeing Respondent's  
8 implementation of the requirements of this Order, EPA response  
9 costs arising from or connected with the Site incurred before the  
10 effective date hereof, time and travel costs of EPA personnel and  
11 associated indirect costs, costs of negotiating this Order,  
12 contractor costs, sampling and compliance monitoring costs,  
13 dispute resolution costs, and costs of redoing any of the work  
14 done by Respondent. Cost summaries provided by U.S. EPA,  
15 including EPA's certified Agency Financial Management System  
16 summary data (SPUR Reports) and U.S. EPA's Cost Documentation  
17 Management System Report (CDMS), shall serve as sufficient basis  
18 for payment demands. Payments shall be made by Respondent within  
19 60 days of Respondent's receipt of the cost statement. Payments  
20 shall be made payable to the "EPA Hazardous Substances Superfund"  
21 at the following address: EPA - Region 9, Attn: Superfund  
22 Accounting, P.O. Box 360863M, Pittsburgh, PA 15251, in the form  
23 of a certified or cashiers check. The face of the check should  
24 note that the payment is for the Southwest Forest Industries,  
25 Inc., Superfund Site Identification Number 1U. A copy of the  
26 check(s) submitted shall be sent simultaneously to the U.S. EPA  
27 representative indicated in Paragraph 35 below. If payment is  
28 not received by U.S. EPA when due, interest shall accrue from the

1 date of the demand, at the rate specified for interest on  
2 investments of the Hazardous Substances Superfund in Section  
3 107(a) of CERCLA, 42 U.S.C. § 9607(a).

4 35. A notice, document, information, report, plan,  
5 approval, disapproval or other correspondence required to be  
6 submitted from one party to another under the Order shall be  
7 deemed submitted or effective either when hand delivered or as of  
8 the date of receipt by certified mail, return receipt requested,  
9 or the date of receipt of an electronic facsimile.

10 Submissions to the Respondent shall be submitted to:

11 Curtis A. Barton  
12 Stone Container Corporation  
13 1979 Lakeside Parkway, Suite 300  
Tucker, Georgia 30084

14 Submissions to the U.S. EPA shall be submitted to:

15 Donn Zuroski (H-8-3)  
16 On Scene Coordinator  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
17 San Francisco, CA 94105

18 36. If any provision of this Order is determined by a court  
19 of competent jurisdiction to be invalid or unenforceable, the  
20 balance of this Order shall remain in full force and effect.

21 37. This Order shall be effective on the date of signature  
22 by the Director, Hazardous Waste Management Division.

23 **PARTIES BOUND**

24 38. The provisions of this Order shall apply to and be  
25 binding upon the U.S. EPA and shall be binding upon the  
26 Respondent and its agents, successors, assigns, employees, and  
27 contractors. No change in the ownership or corporate or other  
28

1 legal status of the Respondent or of the facility or the Site  
2 shall alter the Respondent's responsibilities under this Order.

3 39. The provisions of this Order and the directions of U.S.  
4 EPA's On-Scene Coordinator made under the provisions of this  
5 Order shall be binding upon the Respondent and its successors,  
6 assigns, employees, agents, and contractors. Respondent shall  
7 provide a copy of this Consent Order to all contractors,  
8 subcontractors and consultants retained to perform any work under  
9 this Order within seven (7) days of the effective date of this  
10 order, or on the date of retaining their services, whichever is  
11 later, and Respondent shall condition contracts with all such  
12 contractors, subcontractors and consultants upon compliance with  
13 this Order. Notwithstanding the terms of any such contract, the  
14 Respondent shall be responsible for compliance with this Order  
15 and with ensuring that all its contractors, subcontractors and  
16 consultants comply with this Order.

#### 17 STIPULATED PENALTIES

18 40. Except as excused by any extensions of time granted by  
19 EPA in writing, and subject to the provisions of this Consent  
20 Order, for each day the Respondent fails to meet the deadlines  
21 set forth in the Consent Order, the Work Plan, and the task-  
22 specific work plans, or otherwise fails to meet the requirements  
23 of this Administrative Order on Consent, Respondent agrees to pay  
24 the sum set forth below as a stipulated penalty. The stipulated  
25 penalty shall be:

26 \$1,000 per day for each of the first 7 days;

27 \$2,000 per day for each day from the 8th through the 15th  
28 day;

1 \$5,000 per day for each day from the 16th through the 30th  
2 day;

3 \$10,000 per day for each day after the 30th day.

4 41. All penalties which accrue pursuant to the requirements  
5 of this Order shall be paid within thirty (30) calendar days of  
6 written demand by U.S. EPA. Payment shall be made to the EPA  
7 Hazardous Substances Superfund at: EPA - Region 9, Attn:  
8 Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251,  
9 payable in the form of a certified or cashier's check payable to  
10 "EPA Hazardous Substances Superfund." The face of the check  
11 should note that the payment is for the Southwest Forest  
12 Industries site.

13 42. If payment is not received by U.S. EPA when due,  
14 interest shall accrue from the date of the demand, at the rate  
15 specified for interest on investments of the Hazardous Substances  
16 Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).  
17 Stipulated penalties shall accrue, but need not be paid, during  
18 any dispute resolution period concerning the particular penalties  
19 at issue. If Respondent prevails upon resolution, Respondent  
20 shall pay such penalties as the resolution requires, with  
21 interest from the date of the demand.

22 43. Payment of stipulated penalties will not relieve  
23 Respondent from complying with the terms of this Consent Order.  
24 U.S. EPA retains the right to seek any remedies or sanctions  
25 available to U.S. EPA by reason of Respondent's noncompliance  
26 with the provisions of this Consent Order that are not otherwise  
27 expressly limited by these Stipulated Penalty provisions.  
28

1                                    PENALTIES FOR NONCOMPLIANCE

2            44. The Respondent is advised pursuant to Section 106(b) of  
3 CERCLA, 42 U.S.C. § 9606(b), that violation or subsequent failure  
4 or refusal to comply with this Order and any Work Plan approved  
5 under this Order, or any portion thereof, may subject the  
6 Respondent to a civil penalty of up to \$25,000 per day for each  
7 day in which such violation occurs, or such failure to comply  
8 continues. In addition, failure to properly provide removal  
9 action upon the terms of this Order, and any subsequent orders  
10 issued by U.S. EPA, may result in liability for punitive damages  
11 pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C § 9607(c)(3).

12                                    TERMINATION AND SATISFACTION

13            45. Within sixty (60) days following completion of the work  
14 required under this Order, or within such time as may be  
15 designated by EPA in an approved work plan, the Respondent shall  
16 submit a Final Report summarizing the actions taken to comply  
17 with this Order. The report shall contain, at a minimum:  
18 identification of the Facility, a description of the locations  
19 and types of hazardous substances encountered at the Facility, a  
20 chronology and description of the actions performed (including  
21 both the organization and implementation of response activities),  
22 a listing of the resources committed to perform the work under  
23 this Order (including financial, personnel, mechanical and  
24 technological resources), identification of all items that  
25 affected the actions performed under the Order and discussion of  
26 how all problems were resolved, a listing of quantities and types  
27 of materials removed, a discussion of removal and disposal  
28 options considered for those materials, a listing of the ultimate

1 destination of those materials, and a presentation of the  
2 analytical results of all sampling and analyses performed and  
3 accompanying appendices containing all relevant paperwork accrued  
4 during the action (e.g., manifests, invoices, bills, contracts,  
5 permits). The Final Report shall also include an affidavit from  
6 a person who supervised or directed the preparation of that  
7 report. The affidavit shall certify under penalty of perjury  
8 that based on personal knowledge and appropriate inquiries of all  
9 other persons involved in preparation of the report, the  
10 information submitted is true, accurate and complete to the best  
11 of the affiant's knowledge and belief.

12 46. The provisions of this Order shall be deemed satisfied  
13 upon payment by the Respondent of all sums due under the terms of  
14 this Order and upon the Respondent's receipt of written notice  
15 from U.S. EPA that the Respondent has demonstrated, to the  
16 satisfaction of U.S. EPA, that all of the terms of this Order,  
17 including any additional tasks consistent with this Consent Order  
18 which U.S. EPA has determined to be necessary, have been  
19 completed.

#### 20 INDEMNIFICATION

21 47. The Respondent agrees to indemnify and save and hold  
22 harmless the United States Government, its agencies, department,  
23 agents, and employees, from any and all claims or causes of  
24 action arising from, or on account of, acts or omissions of the  
25 Respondents, <sup>L 125</sup> ~~their~~ <sup>WSP</sup> officers, employees, receivers, trustees,  
26 agents, successors or assigns, in carrying out the activities  
27 pursuant to this Order. The United States Government shall not  
28 be held as a party to any contract entered into by the Respondent



1 in carrying out activities under this Order.

2 RESERVATION OF RIGHTS

3 48. EPA reserves the right to bring an action against the  
4 Respondent under Section 107 of CERCLA for recovery of all  
5 response costs, including oversight costs, incurred by the United  
6 States at the Site that are not reimbursed by the Respondent, any  
7 costs incurred in the event that EPA performs the work required  
8 under this Order or any part thereof, and any future costs  
9 incurred by the United States in connection with response  
10 activities conducted under CERCLA at the Site.

11 49. EPA reserves the right to bring an action against  
12 Respondent to enforce the past costs and response and oversight  
13 cost reimbursement requirements of this Consent Order, to collect  
14 stipulated penalties assessed pursuant to the Stipulated  
15 Penalties provisions of this Consent Order, and to seek penalties  
16 pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

17 50. Except as expressly provided in this Order, each party  
18 reserves all rights and defenses it may have. Nothing in this  
19 Consent Order shall affect EPA's removal authority or EPA's  
20 response or enforcement authorities including, but not limited  
21 to, the right to seek injunctive relief, stipulated penalties,  
22 statutory penalties, and/or punitive damages.

23 51. Following satisfaction of the requirements of this  
24 Consent Order, Respondent shall have resolved its liability to  
25 EPA for the work performed by Respondent pursuant to this Consent  
26 Order. Respondent is not released from liability, if any, for  
27 any response actions taken beyond the scope of this Order  
28 regarding removals, remedial design/remedial action, or

1 activities arising pursuant to Section 121(c) of CERCLA.

2 52. Nothing in this Order shall confer upon Respondent any  
3 ability to obtain pre-enforcement review of U.S. EPA actions.  
4 Notwithstanding any reservation of rights, Respondent agrees to  
5 comply with the terms and conditions of this Order and consents  
6 to the jurisdiction of the U.S. EPA to enter into and enforce  
7 this Order.

8 53. Nothing herein shall be construed to prevent U.S. EPA  
9 from exercising its right to disapprove of work performed by the  
10 Respondent.

11 **FORCE MAJEURE**

12 54. The Respondent shall cause all work to be performed  
13 within the time limits set forth herein and in the approved Work  
14 Plan and task-specific work plans, unless EPA determines that  
15 performance is delayed by "force majeure". For purposes of this  
16 Order, "force majeure" shall mean an event arising from causes  
17 entirely beyond the control of the Respondent and its contractors  
18 which delays or prevents the performance of any obligation  
19 required by this Order. Increases in costs, financial  
20 difficulty, and normal inclement weather, are examples of events  
21 that are not considered to be beyond the control of the  
22 Respondent.

23 55. Respondent shall notify the OSC within 24 hours after  
24 Respondent becomes aware of any event which Respondent contends  
25 constitutes a force majeure, with subsequent written notice  
26 within seven (7) calendar days of the event. Such written notice  
27 shall describe: 1) the nature of the delay, 2) the cause of the  
28 delay, 3) the expected duration of the delay, including any

1 demobilization and remobilization resulting from the delay, 4)  
2 the actions which will be taken to prevent or mitigate further  
3 delay, and 5) the timetable by which the actions to mitigate the  
4 delay will be taken. Respondent shall implement all reasonable  
5 measures to avoid and/or minimize such delays. Failure to comply  
6 with the notice provision of this paragraph shall be grounds for  
7 U.S. EPA to deny Respondent an extension of time for performance.  
8 The Respondent shall have the burden of demonstrating by a  
9 preponderance of the evidence that the event is a force majeure,  
10 that the delay is warranted under the circumstances, and that  
11 best efforts were exercised to avoid and mitigate the effects of  
12 the delay. If U.S. EPA determines a delay is or was attributable  
13 to a force majeure, the time period for performance under this  
14 Order shall be extended as deemed necessary by EPA to allow  
15 performance.

#### 16 17 DISPUTE RESOLUTION

18 56. The Parties to this Order on Consent shall attempt to  
19 resolve expeditiously and informally any disagreements concerning  
20 implementation of this Order on Consent or any Work required  
21 hereunder.

22 57. In the event that any dispute arising under this Order  
23 on Consent is not resolved expeditiously through informal means,  
24 any party desiring dispute resolution under this Dispute  
25 Resolution Section shall give prompt written notice to the other  
26 party(ies) to the Order.

27 58. Within ten (10) days of the service of notice of  
28 dispute pursuant to Paragraph 57 above, the party who gave notice

1 shall serve on the other parties to this Order a written  
2 statement of the issues in dispute, the relevant facts upon which  
3 the dispute is based, any factual data, analysis or opinion  
4 supporting its position, and all supporting documentation on  
5 which such party relies (hereinafter the "Statement of  
6 Position"). The opposing parties shall serve their Statement of  
7 Position, including supporting documentation, no later than ten  
8 (10) days after receipt of the complaining party's Statement of  
9 Position. These 10-day time periods for exchange of Statements  
10 of Position may be shortened or lengthened upon notice by U.S.  
11 EPA, if deemed appropriate by U.S. EPA in light of the nature of  
12 the dispute. The complaining party may, at its option, file a  
13 Response to the opposing parties' Statement of Position no later  
14 than five (5) days after receipt of the Statement of Position.

15 59. The administrative record of any dispute under this  
16 Dispute Resolution Section shall be maintained by U.S. EPA. The  
17 record shall include the written notification of such dispute,  
18 and the Statements of Position and Response, if any, served  
19 pursuant to the preceding paragraphs.

20 60. Upon review of the administrative record, the Director  
21 of the Hazardous Waste Management Division, U.S. EPA, Region IX,  
22 shall resolve the dispute. The Director shall act to resolve the  
23 dispute with due diligence after his receipt of the Statements of  
24 Position and Response, if any. Respondent shall proceed in  
25 accordance with the decision of the Director of the Hazardous  
26 Waste Management Division.

27 61. Respondent is not relieved of its obligations to  
28 perform and conduct activities and submit deliverables on the

1 schedules set forth herein and in the work plans, while a matter  
2 is pending in dispute resolution.

3 62. Respondent agrees to limit any disputes concerning U.S.  
4 EPA costs to accounting errors and the inclusion of costs outside  
5 the scope of this Order. Within twenty (20) days of receipt of  
6 U.S. EPA's written demand, Respondent shall identify any  
7 contested costs and the basis of its objection. All undisputed  
8 costs shall be remitted by Respondent in accordance with the  
9 provisions of this Order. Within thirty (30) days of the date of  
10 the demand, Respondent shall (a) pay any disputed costs into an  
11 escrow account administered by an independent trustee, with  
12 instructions to hold such funds while the dispute is pending and  
13 to pay the proceeds to the party prevailing in the dispute  
14 resolution process, and (b) send EPA a copy of such instructions,  
15 the agreement with the trustee, and evidence of payment into the  
16 account. Respondent bears the burden of establishing an EPA  
17 accounting error or the inclusion of costs outside the scope of  
18 this Consent Order.

#### 19 NON-ADMISSION

20 63. The consent of the Respondent to the terms of this  
21 Order shall not constitute or be construed as an admission of  
22 liability or of U.S. EPA's findings or determinations contained  
23 in this Order in any proceeding other than a proceeding to  
24 enforce the terms of this Order.

#### 25 CERCLA FUNDING

26 64. The Respondent waives any claims or demands for  
27 compensation or payment under Sections 106(b), 111 and 112 of  
28 CERCLA against the United States or the Hazardous Substance

1 Response Trust Fund established by Section 221 of CERCLA for, or  
2 arising out of, any activity performed or expenses incurred  
3 pursuant to this Consent Order.

4 65. This Consent Order does not constitute any decision on  
5 preauthorization of funds under Section 111(a)(2) of CERCLA.

#### 6 SUBSEQUENT AMENDMENT

7 66. This Consent Order may be amended by mutual agreement  
8 of U.S. EPA and the Respondent. Any amendment of this Consent  
9 Order shall be in writing, signed by U.S. EPA and the Respondent  
10 and shall have as the effective date, that date on which such  
11 amendment is signed by U.S. EPA. EPA Project Coordinators do not  
12 have the authority to sign amendments to the Order. No informal  
13 advice, guidance, suggestions, assurances, or comments by EPA or  
14 its authorized representatives shall modify the terms and  
15 conditions of this Order or relieve any Respondent of its  
16 obligations under this Order, including its obligations to obtain  
17 formal approvals.

#### 18 SIGNATORIES

19 67. Each undersigned representative of a signatory to this  
20 Administrative Order on Consent certifies that he or she is fully  
21 authorized to enter into the terms and conditions of this Order  
22 and to bind such signatory, its directors, officers, employees,  
23 agents, successors and assigns, to this document.

#### 24 WARRANTY

25 68. The Respondent represents and warrants to EPA that it  
26 is the successor to Southwest Forest Industries, Inc., and that  
27 it is a Delaware corporation in good standing that is wholly  
28 owned by Stone Container Corporation. This representation and

warranty shall survive the execution of this Order.

#### REIMBURSEMENT OF YAVAPAI-PRESCOTT INDIAN TRIBE

69. In accordance with CERCLA section 107(a)(4)(A), Respondent agrees to reimburse the Yavapai-Prescott Indian Tribe ("Yavapai") for its response costs arising from or connected with the Site and not inconsistent with the NCP which are incurred up to the effective date of this Order, plus additional response costs totalling not more than \$10,000.00 that are incurred after the effective date of this Order. Respondent shall reimburse Yavapai for all undisputed costs within thirty days from its receipt of Yavapai's invoices for its costs. Respondent's payment shall be made payable to the Yavapai-Prescott Indian Tribe and shall be sent by Respondent to:

Donald A. James, Business Manager  
Yavapai-Prescott Indian Tribe  
530 East Merritt  
Prescott, Arizona 86301-2038

In the event that Respondent disputes any of Yavapai's costs, it shall notify EPA and Yavapai and define the dispute in writing, within thirty days from receipt of Yavapai's invoices. Yavapai and Respondent shall then have an additional 14 days to reach agreement on the disputed costs. If an agreement is not reached within 14 days, Respondent or Yavapai may request a determination by EPA's Hazardous Waste Management Division Director. The Hazardous Waste Management Division Director's decision will constitute the final decision. The parties agree that this decision shall not be reviewable by any court. If the Hazardous Waste Management Division Director decides that all or a portion

1 of the disputed costs are owed by Respondent to Yavapai,  
2 Respondent shall reimburse Yavapai within twenty-one (21) days  
3 after Respondent's receipt of written notice from EPA of the  
4 decision. This paragraph 69 is expressly conditioned on (1)  
5 Yavapai providing access to the Site to Respondent and its  
6 authorized representatives and to U.S. EPA and its authorized  
7 representatives; (2) Yavapai's agreement to release Respondent  
8 from all claims for past response costs incurred by Yavapai  
9 arising from or connected with the Site upon payment by  
10 Respondent in accordance with this paragraph; and (3) the  
11 execution of this Order by Yavapai within sixty days after the  
12 effective date of this Order.

13  
14 Agreed this 12<sup>th</sup> day of August, 1992.

15 Stone Southwest, Inc., a Delaware Corporation

16 By 

17 Leslie T. Lederer

18 Its Secretary  
19

20 The above being agreed and consented to, it is so ORDERED

21 this 18<sup>th</sup> day of August, 1992.

22  
23 By 

24 JEFF ZELIKSON, Director  
25 Hazardous Waste Management Division  
26 U.S. Environmental Protection Agency  
27 Region IX

28 The Yavapai-Prescott Indian Tribe concurs with paragraph 69.

Yavapai-Prescott Indian Tribe



1 By

Patricia McGee  
Its President

3  
4 Contacts:

5 Donn Zuroski (H-8-3)  
6 Federal On-Scene Coordinator  
7 United States Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, California 94105  
10 (415) 744-2285

11 David Silverman (RC-3-1)  
12 Office of Regional Counsel  
13 United States Environmental Protection Agency, Region IX  
14 75 Hawthorne Street  
15 San Francisco, California 94105  
16 (415) 744-1377

17 John Jaros (H-8-3)  
18 Enforcement Case Officer  
19 Emergency Response Section  
20 United States Environmental Protection Agency, Region IX  
21 75 Hawthorne Street  
22 San Francisco, California 94105  
23 (415) 744-2289  
24  
25  
26  
27  
28